



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

OCT 14 2014

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Article Number: 7005 3110 0000 5967 7353

Mr. Daniel Miller, Owner
Miller's Son Shine Acres, Inc.
1280 Bennett Road
Corfu, NY 14036

Re: **Administrative Docket No. CWA-02-2015-3001**
Miller's Son Shine Acres, Inc., SPDES Permit No. NYA000458
Clean Water Act Information Request and Administrative Compliance Order

Dear Mr. Miller:

Please find enclosed a combined Information Request and Administrative Compliance Order (together, the "Order"), which the United States Environmental Protection Agency ("EPA") Region 2 is issuing to Miller's Son Shine Acres, Inc. ("Miller's Son Shine Acres") pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318(a) and 1319(a). The EPA is issuing the Information Request to require Miller's Son Shine Acres to provide specific information regarding the condition of its farmsteads located at 1280 Bennett Road in Corfu, New York, Route 20, east of Colby Road in Darien Center, New York and Simonds Road, south of Ellinwood Road ("Facility") and the actions needed to attain compliance with the CWA and with the State Pollutant Discharge Elimination System ("SPDES") General Permit for Concentrated Animal Feeding Operations ("CAFOs") General Permit No. GP-04-02 ("CAFO General Permit" or "Permit"). The EPA is issuing the Administrative Compliance Order because Miller's Son Shine Acres, Inc. has violated and remains in a state of noncompliance with CWA Section 301, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations of the CAFO General Permit.

Enclosed are two originals of the Order. Please acknowledge receipt of the Order on one of the originals and return it by mail in the enclosed envelope. Failure to comply with the enclosed Order may subject Miller's Son Shine Acres, Inc. to civil or criminal penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

Also enclosed is the Inspection Report for the inspection of the Facility conducted by the EPA on May 21, 2014.

If you have any questions regarding the enclosed Order, please contact Douglas McKenna, Chief, Water Compliance Branch, at (212) 637-4244.

Sincerely,

Dore LaPosta, Director
Division of Enforcement and Compliance Assistance

Internet Address (URL) • <http://www.epa.gov>

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Enclosures

cc: Joseph DiMura, P.E, Director, Bureau of Water Compliance Programs, NYSDEC
Scott Rodabaugh, Regional Water Engineer, NYSDEC Region 8

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
Region 2
290 Broadway
New York, New York 10007-1866

IN THE MATTER OF:

Miller's Son Shine Acres, Inc.
1280 Bennett Road
Corfu, New York 14036

SPDES Permit No. NYA000458

Respondent

Proceeding pursuant to §§ 308(a) and 309(a) of the
Clean Water Act, 33 U.S.C. §§ 1318(a) and 1319(a)

**INFORMATION REQUEST AND
ADMINISTRATIVE COMPLIANCE ORDER**

CWA-02-2015-3001

A. STATUTORY AUTHORITY

The following Information Request and Administrative Compliance Order (together the "Order") are issued pursuant to Sections 308(a) and 309(a) of the Clean Water Act ("CWA"), respectively, 33 U.S.C. §§ 1318(a) and 1319(a). These authorities have been delegated by the Administrator of the United States Environmental Protection Agency ("EPA") to the Regional Administrator, EPA Region 2 and further delegated to the Director of the Division of Enforcement and Compliance Assistance, EPA Region 2.

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), makes it unlawful for any person to discharge any pollutant from a point source to waters of the United States, except, among other things, with the authorization of, and in compliance with, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.
2. Section 402 of the CWA, 33 U.S.C. § 1342, authorizes the Administrator of the EPA to issue a NPDES permit for the discharge of any pollutant, or combination of pollutants subject to certain requirements of the CWA and conditions which the Administrator determines are necessary. The New York State Department of Environmental Conservation ("NYSDEC") is the agency with the authority to administer the federal NPDES program in New York pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b). A State Pollutant Discharge Elimination System ("SPDES") permit is required to be issued to facilities by the NYSDEC for the discharge of pollutants from point sources to navigable waters of the United States. The EPA maintains concurrent enforcement authority with authorized states for violations of the CWA and permits issued by authorized States thereunder.
3. The Administrator of EPA has promulgated 40 C.F.R. § 122.23(a), which requires operators to obtain a NPDES permit for discharges or potential discharges associated with Concentrated Animal Feeding Operations. The regulation at 40 C.F.R. § 122.23 establish requirements for discharges associated with Concentrated Animal Feeding Operations, including all animals or the production of those animals, regardless of the type of animal.

4. "Person" is defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), to include any individual, corporation, partnership, association or municipality.
5. "Discharge of a pollutant" is defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12), to include any addition of any pollutant to navigable waters from any point source.
6. "Pollutant" is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), to include among other things, solid waste, dredged spoil, rock, sand, cellar dirt, sewage, sewage sludge and industrial, municipal and agricultural waste discharged into water.
7. "Point source" is defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14), to include any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.
8. "Navigable waters" is defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7), to include the waters of the United States, and "waters of the United States" is defined at 40 C.F.R. 122.2 to include, among other things, waters which are currently used in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide, and all other waters, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce.
9. An "animal feeding operation" or "AFO" is defined by 40 C.F.R. § 122.23(b)(1) as a lot or facility where animals have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period, and where crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
10. A "concentrated animal feeding operation" or "CAFO" is defined by 40 C.F.R. § 122.23(b)(2) as an AFO that is, *inter alia*, a medium CAFO.
11. A "medium CAFO" is defined by 40 C.F.R. § 122.23(b)(6)(i)(A) as an animal feeding operation that stables or confines within the range of 200 to 699 mature dairy cows, whether milked or dry.
12. "Process wastewater" is defined by 40 C.F.R. § 122.23(b)(7) as water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing or cleaning or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes in contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.
13. "Production area" is defined by 40 C.F.R. § 122.23(b)(8) as that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas.

14. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), provides, in relevant part, that the Administrator of the EPA may require the owner or operator of any point source to, among other things: establish and maintain such records; make such reports; install, use and maintain such monitoring equipment; sample such effluents; and provide such other information as may reasonably be required to carry out the objective of the CWA.
15. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator of the EPA to issue an order requiring compliance with the CWA when any person is found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311, for, among other things, violating any condition or limitation contained in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

B. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Director makes the following findings of fact and conclusions of law:

1. Dan Miller, doing business as Miller's Son Shine Acres, Inc. ("Respondent"), owns and operates a dairy farm with four farmsteads located at the following locations:
 - a. Home Farm, 1280 Bennett Road, Corfu, New York 14036
 - b. Sierk Farm, 1765 Broadway Road, Darien, New York 14040
 - c. Czapeczka Farm, 9590 Simonds Road, Corfu, New York 14036
 - d. Gildner Farm, Bennett Road, Corfu, New York 14036Collectively, these four farmsteads are part of Miller's Son Shine Acres, Inc. ("Facility").
2. Respondent is a person under Sections 502(5) and 502(4) of the CWA, 33 U.S.C. §§ 1362(5) and 1362(4).
3. The Facility confines and feeds or maintains dairy cows for a total of forty-five (45) days or more in any twelve-month period, and neither crops, vegetation, forage growth, nor post harvest residues are sustained in the normal growing season over any portion of the lot or facility. Therefore, the Facility is an AFO as defined by 40 C.F.R. § 122.23(b)(1), and as that phrase is used in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
4. The Facility confines approximately 660 mature dairy cows on-site. Therefore, the Facility is a medium CAFO as that term is defined in 40 C.F.R. § 122.23(b)(6)(i)(A).
5. Production area runoff from the Home Farm at the Facility directly discharges to a tributary to Murder Creek. Production area runoff from the Gildner Farm would flow to a tributary to Murder Creek. Production area runoff from the Sierk Farm would flow to Ellicott Creek, also known as "Crooked" Creek. Production area runoff from the Czapeczka Farm would flow to both a tributary to Murder Creek and Huron Creek. The tributary to Murder Creek, Ellicott Creek, and Huron Creek are all waters of the United States.
6. On June 18, 1999, the NYSDEC issued SPDES General Permit for CAFOs No. GP-99-01, with an effective date of July 1, 1999 and an expiration date of June 30, 2004.
7. On June 24, 2004, the NYSDEC issued SPDES General Permit for CAFOs No. GP-04-02, with an effective date of July 1, 2004 and an expiration date of June 30, 2009 ("CAFO General Permit" or "Permit"). GP-04-02 has been administratively extended.

8. On November 16, 1999, Respondent applied for coverage under the CAFO General Permit. On December 1, 1999, NYSDEC granted Respondent authorization under the CAFO General Permit pursuant to permit No. NYA000458. Respondent has been covered under the conditions and limitations in the permit at all relevant times addressed by the Information Request and Administrative Compliance Order.
9. The CAFO General Permit authorizes Respondent to discharge pollutants associated with stormwater from Facility to the tributary to Murder Creek, Ellicott Creek, and Huron Creek under the conditions and limitations prescribed in the permit.
10. On May 21, 2014, the EPA conducted an inspection of the Miller's Son Shine Acres, Inc. Facility.
11. Based on the Inspection findings, the EPA finds that the Respondent has failed to comply with the CWA and the conditions and limitations of the CAFO General Permit, including but not limited to the following:
 - a. Section VI.A of the NYSDEC CAFO General Permit states "[t]here shall be no discharge of process wastewater pollutants to the surface waters of the State except in accordance with Section VI.C of this permit." In addition, Section VII.B of the NYSDEC CAFO General Permit requires CNMPs to have been "prepared in accordance with NRCS Conservation Practice Standard No. NY312" which requires that clean water be excluded from concentrated waste areas to the fullest extent practical. At 40 C.F.R. 122.42(e), the Federal CAFO Rule also specifies what a Nutrient Management Plan (NMP) must address, at a minimum. Specifically, NMPs should ensure that clean water is diverted, as appropriate, from the production area (see 40 C.F.R. 122.42(e)(iii)). At the time of the inspection, a box inlet was observed at the east end of the Dry Cow Barn adjacent to a roofed barnyard and feed alleyway. The inlet was clogged with feed residuals and caked residue was observed on top of the inlet. The inlet directly discharges to a grassy swale which in turn discharges to a tributary to Murder Creek, according to Facility representatives. Therefore, Respondent violated Section VI.A of the Permit.
 - b. Section VIII.C.xi of the NYSDEC CAFO General Permit requires that "[c]ollection, storage, and disposal of liquid and solid waste should be managed in accordance with NRCS standards." Specifically, NRCS Conservation Practice Standard No. 312 "Waste Management System" states that "waste" includes polluted runoff such as that from a barnyard or silo, and that all farms with silage will address silage leachate control." In addition, Section X.G of the CAFO General Permit requires the permittee to, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with this permit. At the time of the inspection, inadequate operation and maintenance was observed at the following areas, in violation of Sections VIII.C.xi and X.G of the Permit:
 - i. Ponding leachate on the south side of the bunk silo at the Home Farm
 - ii. Leachate bypassing the Vegetated Treatment Area ("VTA") collection and distribution system at the Home Farm and ponding on the northern and southern edges of the VTA, as well as the eastern edge at the base of the VTA before discharging to a tributary of Murder Creek at two different points. In addition, the

- EPA inspection team observed that the VTA had not been mowed since Spring 2013 as it was very overgrown.
- iii. Considerable ponding of leachate was observed to the southwest of the bunk silo at Sierk Farm. However, the EPA inspection team did not observe a discharge as runoff flows to a nearby pasture.
 - iv. Lack of site-specific operation and maintenance plan for the silage leachate control system at the Home Farm.
- c. Section VIII.C.xi of the NYSDEC CAFO General Permit requires that “[c]ollection, storage, and disposal of liquid and solid waste should be managed in accordance with NRCS standards.” NRCS Conservation Practice Standard No. 313 “Waste Storage Facility” specifies general criteria applicable to all waste storage facilities as well as additional criteria for waste storage ponds. In addition, Section X.G of the CAFO General Permit requires the permittee to at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with this permit. At the time of the inspection, inadequate operation and maintenance was observed at the following areas, in violation of Sections VIII.C.xi and X.G of the Permit:
- i. Overgrown vegetation was observed at the Home Farm manure storage as it had not been mowed since Spring 2013 according to the Facility representative.
 - ii. Lack of depth marker at the Home Farm manure storage was observed.
 - iii. Lack of complete fencing around the Home Farm manure storage was observed.
 - iv. Unvegetated and unstablized banks at the Sierk Farm manure storage. In addition, the EPA inspection team observed cows walking on the banks of the manure storage structure during the inspection.
 - v. Lack of containment and storage at the concrete underbarn waste transfer system at Czapeczka Farm as the EPA inspection team observed significant spillage of manure on the hillside to the west of the underbarn storage location. In addition, the EPA inspection team observed manure seeping around the metal covers on top of the underbarn storage.
 - vi. Lack of site-specific operation and maintenance plans for the Home Farm manure storage, Sierk Farm manure storage, and the concrete underbarn waste transfer system at Czapeczka Farm.

12. Based upon Paragraphs 1-11 above, the EPA finds that Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, for failing to comply with the conditions and limitations in the CAFO General Permit.

C. REQUESTED INFORMATION

Based on the Findings of Fact and Conclusions of Law, above, and pursuant to the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), Respondent is required to submit to the EPA in writing a written response regarding each of the listed Areas of Concern in the enclosed Inspection Report within **sixty (60) days** of receipt of this Order.

D. ORDERED PROVISIONS

Based upon the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the CWA, 33 U.S.C. § 1319(a), Respondent is hereby ORDERED to do the following:

1. Respondent shall complete the following items in accordance with the schedule listed below:

<u>Item</u>	<u>Completion Deadline</u>
i. Cease discharging silage leachate and contaminated stormwater to the tributary to Murder Creek.	Immediately
ii. Submit to EPA and NYSDEC a written report summarizing the corrective actions taken in response to Item i above. Such report shall include photographs documenting measures implemented and costs associated with the corrective actions.	Within thirty (30) days of receipt of this Order
iii. Develop and implement pollution prevention measures to ensure that clean water is excluded from concentrated waste areas and the production areas to the fullest extent practical at the east end of the Dry Cow Barn at the Home Farm.	Develop and implement immediately
iv. Submit to EPA and NYSDEC a written report summarizing the pollution prevention measures taken in response to Item iii above. Such report shall include photographs documenting measures implemented and costs associated with the corrective actions.	Within thirty (30) days of receipt of this Order
v. Properly operate and maintain systems of treatment and control in accordance with the CAFO General Permit and NRCS Standards, including but not limited to the following: <ul style="list-style-type: none">a. Maintain vegetation at the Home Farm manure storage;b. Install and maintain a depth marker at the Home Farm manure storage;c. Install and maintain fencing at the Home Farm storage;d. Establish and maintain vegetation at the Sierk Farm manure storage;e. Establish and implement procedures to ensure that livestock are kept off the Sierk Farm manure storage;f. Underbarn waste transfer system at Czapeczka Farm; andg. Development of site-specific operation and maintenance plans for the Home Farm manure storage, Sierk Farm manure storage, and concrete underbarn waste transfer system at Czapeczka Farm.	Within forty-five (45) days of receipt of this Order

vi.	Submit to EPA and NYSDEC a written report summarizing the pollution prevention measures taken in response to Item v above. Such report shall include photographs documenting measures implemented and costs associated with each item.	Within sixty (60) days of receipt of this Order
vii.	Complete modifications to the silage leachate control system including but not limited to the high flow collection system and the Vegetated Treatment Area at the Home Farm, in accordance with applicable NRCS standards.	Within ninety (90) days of receipt of this Order
viii.	Develop and implement a site-specific operation and maintenance plan for the silage leachate control system, including but not limited to the VTA at the Home Farm.	Within ninety (90) days of receipt of this Order
ix.	Submit to EPA and NYSDEC a written report summarizing all corrective actions taken in response to Item vii and viii above. Such report shall include photographs documenting measures implemented and costs associated with each item.	Within one hundred twenty days (120) days of receipt of this Order
x.	Install and implement the planned silage leachate control system at Sierk Farm.	July 31, 2015
xi.	Submit to EPA and NYSDEC a written report summarizing the installation and implementation of the control system identified in Item x above. Such report shall include photographs documenting measures implemented and costs associated with each item.	August 31, 2015

E. GENERAL PROVISIONS

1. Any information or documents to be submitted by Respondent as part of this Order shall, pursuant to 40 C.F.R. § 122.22, be sent by certified mail or its equivalent to:

Douglas McKenna, Chief
Water Compliance Branch
Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway - 20th floor
New York, NY 10007-1866

and shall be signed by an authorized representative of Respondent, and shall include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

2. Immediately upon receipt of the original copies of this Order, a responsible official of Respondent shall complete and sign the acknowledgment of receipt of one of the originals of the Order and return said original to the Agency representative named above, in paragraph E.1., in the enclosed envelope.
3. Respondent shall have the opportunity, for a period of twenty (20) days from the effective date of this Order, to confer regarding the Requested Information or Ordered Provisions, with the Agency representative named above, in paragraph E.1.
4. Respondent may seek federal judicial review of the CWA Section 309(a) Administrative Compliance Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
5. This Order does not constitute a waiver from compliance with, or a modification of, the effective terms and conditions of the CWA, its implementing regulations, or any applicable permit, which remain in full force and effect. It is an action taken by the EPA to ensure swift compliance with the CWA, and its issuance shall not be deemed an election by the EPA to forego any civil or criminal actions for penalties, fines, imprisonment, or other appropriate relief under the CWA.
6. Notice is hereby given that failure to provide the information requested in Section C, above, pursuant to CWA Section 308(a), may result in Respondent’s liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has failed to provide any of the Requested Information. You may also be subject to administrative remedies for failing to comply with the Information Request, as provided by Section 309 of the CWA.
7. Notice is also given that failure to complete the provisions ordered in Section D, above, pursuant to CWA Section 309(a), may result in Respondent’s liability for civil penalties for each violation of up to \$37,500 per day under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by the EPA, the United States District Court may impose such penalties if, after notice and opportunity for a hearing, the Court determines that Respondent has violated the CWA as described above and failed to comply with the Ordered Provisions. The District Court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of the Administrative Compliance Order.
8. If any provision of this Order is held by a court of competent jurisdiction to be invalid, any surviving provisions shall remain in full force and effect.

9. This Order shall become effective upon the date of execution by the Director, Division of Enforcement and Compliance Assistance.

Dated: OCTOBER 14, 2014

Signed: _____

Dore LaPosta, Director
Division of Enforcement and
Compliance Assistance

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF:

Miller's Son Shine Acres, Inc.
1280 Bennett Road
Corfu, New York 14036

SPDES Permit No. NYA000458

Respondent

Proceeding pursuant to §§ 308(a) and 309(a) of
the Clean Water Act, 33 U.S.C. §§ 1318(a) and
1319(a).

**INFORMATION REQUEST AND
ADMINISTRATIVE COMPLIANCE ORDER**

CWA-02-2015-3001

**ACKNOWLEDGMENT OF RECEIPT OF
INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER**

I, _____, an officer of the Respondent, with the title of,
_____, do hereby acknowledge the receipt of copy of the

INFORMATION REQUEST AND ADMINISTRATIVE COMPLIANCE ORDER, CWA-02-
2015-3001.

DATE: _____

SIGNED: _____